

CC: TO JUDGE MR

CV 01-01915 #00000038

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

BIANCA FAUST, individually and  
as guardian of GARY C. FAUST, a minor,  
and BIANCA CELESTINE MELE,

Plaintiffs,

vs.

BELLINGHAM, WASHINGTON LODGE #493  
LOYAL ORDER OF MOOSE, INC., et al.

Defendants.

Civil Action No C01-1915R

PLAINTIFF'S MOTION TO COMPEL  
PRODUCTION OF MEMBERSHIP  
LIST

NOTE ON MOTION CALENDAR.  
December 6, 2002

PLAINTIFF'S MOTION TO COMPEL PROCUTION OF  
MEMBERSHIP LIST - 1

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**I. Relief Requested**

Plaintiffs, by and through their attorneys, move the Court to order the Moose Lodge to produce its membership list.

**II. Statement of Facts**

April 21, 2000, Mr Kinkaid crashed head-on into a car driven by Bianca Foust. Mr. Kinkaid was killed. Ms. Faust and her two passengers were severely injured. Reports indicate that Mr. Kinkaid was legally intoxicated at the time.

Prior to the accident, Hawkeye Kinkaid had been drinking at the Bellingham Moose Lodge #493. The amount of alcohol he consumed there, his condition while being served it and the exact time he left the Lodges are facts that remain in dispute. *See Declaration of Paul Hirsh*

Plaintiffs have requested that the Moose Lodge produce its membership list. The Moose Lodge keeps a membership list that contains the names and addresses of their members and their dates of membership, but has refused to produce it. *See Declaration of Paul Hirsh.*

**III Statement of Issue**

Whether the Court will grant the plaintiffs' motion and order the Moose Lodge to provide the plaintiff's with a copy of its members list, where this list is relevant, not-privileged, and is in sole custody of defendants?

**IV. Evidence Relied Upon**

This Motion relies the Declaration of Paul Hirsh, the Federal Rules of Civil Procedure and Evidence and the records and files herein.

**V. Legal Authority**

The Moose Lodge should be ordered to provide the plaintiffs with their membership list. The Federal Civil Rules, the Federal Rules of Evidence, and Case Law support the plaintiffs' Motion to Compel. The Moose Lodge should be order to produce its membership list.

Federal Civil Rule 37 provides that when a party fails to respond to discovery requests, the party that initiates discovery may move for an order compelling responses. Furthermore, Compilations of data, including membership lists, are discoverable under Federal Civil Rule 34, if relevant and not privileged.

Relevant evidence is defined under Federal Evidence Rule 401 as any evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Finally, the Supreme Court permits the discovery of membership lists where their use is confined litigation purposes. *Seattle Times Co. v. Rhinhart*, 467 U.S. 20, 36-37, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984) (holding that the Seattle Times newspaper could obtain a membership list from a religious organization without violating its members civil rights).

Here, the Moose Lodge has not provided the plaintiffs with the membership list containing the names and addresses of their members. The Moose Lodge's membership list is both relevant and not privileged. Furthermore, its production for litigation purposes will not violate any of Lodge's members' civil rights.

Determining what time Mr. Kinkaid left the Lodge and whether he appeared intoxicated must be answered by witness testimony. Any member who was at the Lodge on the night of the accident may be able to provide evidence vital to resolving this case.

1 November 14, 2002

2 FREISE & WELCHMAN

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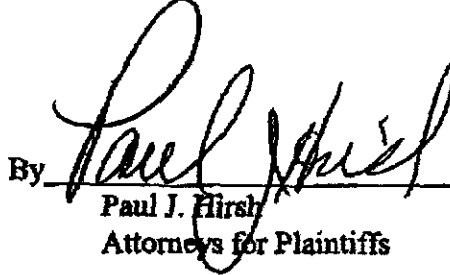
5 By \_\_\_\_\_

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13 Paul J. Hirsh

14 Attorneys for Plaintiffs

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PLAINTIFF'S MOTION TO COMPEL PROCUTION OF  
MEMBERSHIP LIST - 4

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